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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,478	04/15/2004	Jean-Yves Legendre	239209US26	6516
22850	7590	08/30/2007		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER WALCZAK, DAVID J	
			ART UNIT 3751	PAPER NUMBER
			NOTIFICATION DATE 08/30/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

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Office Action Summary	Application No. 10/824,478	Applicant(s) LEGENBRE, JEAN-YVES	
	Examiner David J. Walczak	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-13, 15, 19, 20, 23, 29, 30, 34, 35, 37, 39, 46, 48, 54 and 61-67 is/are rejected.
- 7) ☐ Claim(s) 60 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/7/07</u> | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 5-7, 14, 16-18, 21, 22, 24-28, 31-33, 36, 38, 40-45, 47, 49-53 and 55-59.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 4/9/07 has been considered. It is noted that three of the foreign references have been lined out as no copy of these references have been submitted.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 8, 9, 10, 11, 12, 13, 19, 20, 29, 30, 34, 35, 37, 46, 48, 54, 61-65 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laub in view of Schuck. In regard to claim 1, Laub discloses an applicator for the application of a product comprised of a reservoir 10 having first and second opposing sides with a first side facing a finger when the applicator is mounted on a finger, means 18 to attach the applicator to a finger, an applicator portion 25 having a first surface configured to engage a portion of a body during use and a second surface secured to the second side of the reservoir located immediately adjacent the second surface of the applicator portion and being isolated from the reservoir prior to a first usage of the device and means 29 to establish communication between the reservoir and the applicator in

response to an operating action during the first use of the device. Although the product does not permeate through the applicator as claimed, attention is directed to the Schuck reference, which discloses another toothbrush wherein the applicator (through which the product flows) can be either bristles 104 or a sponge 120 (through which the material permeates) in order to enable a user to employ a sponge to apply product to the oral cavity. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the bristles in the Laub device can be replaced with a sponge (through which the product can permeate) in order to enable a user to employ a sponge to apply product to the oral cavity. Further, as the length of the bristled section of the Laub device extends substantially along the length of the reservoir, the substituted sponge would also extend along the same length. Accordingly, the second surface of the applicator portion (i.e., the sponge) and the second side of the reservoir have respective lengths wherein the second surface of the applicator and the second side of the reservoir would be in contact with each other "along substantially all of their respective lengths". In regard to claim 2, the means to attach the applicator includes a finger stall 18. In regard to claims 3 and 4, the means to establish communication includes a membrane 29 which breaks in response to pressure exerted on the first side of the reservoir. In regard to claims 8 and 9, the first side of the reservoir is deformable to thereby establish the communication (see page 2, lines 32-35). In regard to claim 10, the sponge applicator constitutes a porous material. In regard to claim 11, sponge material 120 of Schuck is considered to be "fibrous". In regard to claim 12, the applicator includes a sponge material. In regard to claim 13, the applicator portion 25 is

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made from a "resiliently deformable" material. In regard to claim 19, the first side of the reservoir is parallel to the face of the applicator (see Figure 2). In regard to claim 20, although the front of the applicator portion does not have a circular shape, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that that applicator portion can be designed to have any suitable shape, including the claimed shape, without effecting the overall operation of the device. In regard to claim 29, the toothpaste in the reservoir is considered a "cosmetic" in that it improves the appearance of the teeth. In regard to claim 30, the applicator is attached to a single finger via attachment means 18. In regard to claims 34, 35, 46 and 48, as discussed supra, the Laub device includes an cosmetic applicator attached to a single finger and comprised of a reservoir, applicator portion, attachment arrangement and a breakable membrane to establish communication as claimed. In regard to claim 37, the reservoir is positioned between the finger and the applicator. In regard to claim 54, the first surface of the reservoir has a convex shape (see Figure 5). In regard to claims 61-63 the sponge applicator would cover an opening in the membrane such that the product would flow through the broken membrane and pass through the applicator to an application surface thereof. In regard to claims 64 and 65, as discussed above, the claimed structure is met by the prior art. In regard to claim 66, the second surface of the applicator portion and the membrane have a length and are in contact with each other over "substantially" all of their length (see page 2, lines 27)

Claims 15, 23, 39 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laub in view of Schuck, as applied above, and further in view of

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MacDonald. Although the Laub device employs a finger stall to attach the device to a finger, and not an adhesive with a removable film, attention is directed to the MacDonald reference, which discloses another finger attached toothbrush wherein an adhesive 16 protected by a removable film 22 is employed to attach the device to a finger. Such an arrangement renders the device to be easily packaged and opened (see column 1, lines 1-22). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such an adhesive (which obviously would be hypoallergenic since it is to be placed in a users mouth) to attach the Laub device to a finger (as opposed to the stall) in order to render that device to be easily packaged and opened.

Allowable Subject Matter

Claim 60 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 7/10/07 have been fully considered but they are not persuasive.

The Applicant contends that the combination of Laub and Schuck do not teach the newly defined limitation of the second surface of the applicator and the second side of the reservoir having lengths that are in contact with each other over substantially all

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of their lengths. As discussed in detail above, however, as the total length of the bristled section of the Laub device is substantially the same as the length of the reservoir, should a sponge applicator replace the bristles, it goes to reason that the sponge applicator would have the same length as the bristled portion it is replacing. Accordingly, the second surface of the sponge would be "substantially" the same length as the second side of the reservoir.

The Applicant then contends that the combination of Laub and Schuck amounts to impermissible hindsight. However, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. Here, as Schuck clearly teaches that a oral hygiene device can have either a bristled applicator or a sponge applicator (depending on the type of oral cleaning material that it to be supplied), and the Laub reference discloses that various types of oral cleaning material may be dispensed (see lines 71-74), one of ordinary skill in the art would readily recognize that either bristles or a sponge applicator can be used on the Laub device, depending on the needs of the user. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

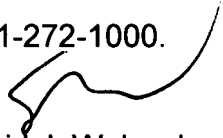
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huson Gregory can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
8/22/07